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9 *Google Inc.*

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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN JOSE DIVISION**

14 IN RE: HIGH-TECH EMPLOYEE
15 ANTITRUST LITIGATION

16 THIS DOCUMENT RELATES TO:
17 ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**DECLARATION OF FRANK WAGNER
IN SUPPORT OF ADMINISTRATIVE
MOTION TO SEAL INFORMATION
INCLUDED IN PLAINTIFFS' REPLY
PAPERS**

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21 I, Frank Wagner, declare:

22 1. I am Director of Compensation at Google Inc. ("Google"). I have served in that
23 position since April 2007. In that capacity, I am familiar with Google's internal decision-making
24 process and business strategy relating to compensation of Google employees, including Google's
25 strategic considerations and internal deliberations regarding compensation for individual
26 employees (which includes salary, bonus, equity grants, recognition awards and benefits). As
27 part of my responsibilities, I am specifically familiar with Google's internal decision-making
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1 process and business strategy relating to offers of employment as well as counteroffers made to
 2 Google employees who have received offers from other firms. I am also familiar with Google's
 3 strategy over time in response to increased or diminished competition in the labor market. In
 4 addition, I am also familiar with the general recruiting strategies and practices employed by
 5 Google. I have personal knowledge of the facts set forth in this Declaration and, if called to
 6 testify, could and would competently thereto.

7 ***Google's Confidential Information in Plaintiffs' Reply***

8 2. I have read and reviewed discrete portions of Plaintiffs' Consolidated Reply in
 9 Support of Motion for Class Certification and Opposition to Defendants' Motion to Strike the
 10 Report of Dr. Edward E. Leamer ("Plaintiffs' Reply") that specifically discuss or reference, and
 11 in some instances mischaracterize, information related to Google. Based on my familiarity with
 12 Google's internal decision making and business strategy regarding compensation and Google's
 13 competitive position in the labor market, the following lines of Plaintiffs' Reply contain
 14 confidential commercial information, the disclosure of which would likely cause competitive
 15 harm to Google by giving third parties (including Google's competitors in the labor market)
 16 direct insight into highly confidential and competitively sensitive aspects of Google's internal
 17 decision-making processes related to its business operations:

- 18 a) **Page i, Headings III.B.1, III.B.2, III.C, and III.D:** These headings
 19 purport to summarize confidential and highly sensitive aspects of the
 20 compensation practices of Defendants, including Google.
- 21 b) **Page 3 (lines 18-25):** This excerpt purports to summarize confidential and
 22 highly sensitive aspects of the compensation practices of Defendants,
 23 including Google.
- 24 c) **Page 13 (line 23) to Page 14 (line 12):** This excerpt provides confidential
 25 and highly sensitive references to Google's strategy to respond to
 26 competition from a rival employer in an effort to retain employees and
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1 also quotes an email message to senior Google management regarding a
2 potential response to a rival employer.

3 d) **Page 14 (Footnote 10):** This footnote contains confidential and highly
4 sensitive information about the number of recruiters Google assigned to
5 particular types of candidates.

6 e) **Page 16 (lines 11-12):** This excerpt quotes from an email message
7 involving senior management at Google that reflects confidential and
8 highly sensitive details of Google's internal deliberations and business
9 strategy related to making counteroffers to Google employees who have
10 received offers from other firms.

11 f) **Page 16 (lines 18-19):** This excerpt reflects confidential and highly
12 sensitive information related to the factors Google uses in determining
13 compensation.

14 g) **Page 17 (lines 14-22):** This excerpt reflects confidential and highly
15 sensitive information about Google's compensation philosophy and
16 practices that is derived from my Declaration in Support of Defendants'
17 Opposition to Plaintiffs' Motion for Class Certification, which was lodged
18 under seal on November 13, 2012 and for which I previously submitted a
19 declaration in support to seal (Docket No. 221) ("Wagner Sealed
20 November 13 Declaration").

21 h) **Page 18 (lines 16-19):** This excerpt reflects confidential and highly
22 sensitive information about Google's compensation practices that is
23 derived from the Wagner Sealed November 13 Declaration.

24 i) **Page 20 (lines 3-26):** This excerpt reflects confidential and highly
25 sensitive information about Google's compensation program and quotes
26 from email messages involving senior Google management that reflect
27 confidential and highly sensitive details of Google's internal deliberations
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1 and business strategy related to making counteroffers to Google
2 employees who have received offers from other firms and the retention of
3 employees in the face of competition from startup companies.

4 j) **Page 21 (lines 5-7):** This excerpt reflects confidential and highly sensitive
5 information about Google's hiring rates and compensation program.

6 k) **Page 22 (lines 5-8):** This excerpt purports to summarize confidential and
7 highly sensitive aspects of changes to Google's compensation levels.

8 ***Google's Confidential Information in Dr. Leamer's Reply Expert Report***

9 3. I have also read and reviewed discrete portions of the Reply Expert Report of
10 Edward E. Leamer, Ph.D. ("Leamer Reply Report") that specifically discuss or reference, and in
11 some instances mischaracterize, information related to Google. Based on my familiarity with
12 Google's internal decision making and business strategy regarding compensation and Google's
13 competitive position in the labor market, the following excerpts of the Leamer Reply Report
14 contain confidential commercial information, the disclosure of which would likely cause
15 competitive harm to Google by giving third parties (including Google's competitors in the labor
16 market) direct insight into highly confidential and competitively sensitive aspects of Google's
17 internal decision-making processes related to its business operations:

18 a) **Page i, Heading III.A.:** This heading purports to summarize confidential and
19 highly sensitive aspects of the compensation policies and practices of Defendants,
20 including Google.

21 b) **Page i, Heading III.C.:** This heading purports to summarize confidential and
22 highly sensitive details about Google's compensation proposal in 2010 reflecting
23 a change to its compensation program for its employees in response to
24 competition from a rival employer in an effort to retain employees.

25 c) **Paragraph 7 (last clause in second sentence, beginning "in response to ..."):**
26 This excerpt provides confidential and highly sensitive details about Google's
27 response to competition from a rival employer in an effort to retain employees.
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- d) **Paragraph 14 (last four of six sentences and accompanying footnote 13):** This excerpt and accompanying footnotes provide confidential and highly sensitive details about Google's recruiting practices and quotes from documents that contain confidential and highly sensitive details about Google's practice in making offers to candidates.
 - e) **Paragraph 15 (last sentence and accompanying footnote 15):** This excerpt and accompanying footnote provide confidential and highly sensitive details and quote from confidential and highly sensitive documents about Google's recruiting policies and practices.
 - f) **Paragraph 16 (first two sentences and accompanying footnote 16):** This excerpt and accompanying footnote provide confidential and highly sensitive details and quote from confidential and highly sensitive documents about Google's recruiting policies and practices.
 - g) **Paragraph 32 (and accompanying footnote 34):** This excerpt and accompanying footnote provide confidential and highly sensitive details and quote from confidential and highly sensitive documents about Google's recruiting policies and practices.
 - h) **Heading A on Page 18 and Paragraphs 46-47:** This heading and these excerpts purport to summarize confidential and highly sensitive aspects of compensation policies and practices of Defendants, including Google.
 - i) **Heading C on Page 23 and Paragraphs 50-53 (and accompanying footnotes 66-67 and 69):** This heading and these excerpts and footnotes provide confidential and highly sensitive details and reference confidential and highly sensitive documents about Google's compensation proposal in 2010 reflecting a change to Google's compensation program for Google employees, and reflect quantitative analysis that Google conducted that calculates the number of employees lost by Google to another employer.

- 1 j) **Paragraph 54 (last sentence):** This excerpt provides confidential and highly
2 sensitive details about Google's hiring and a change to Google's compensation
3 program for Google employees.
- 4 k) **Paragraph 56 (first sentence):** This excerpt provides confidential and highly
5 sensitive details about a change to Google's compensation program for Google
6 employees.
- 7 l) **Figure 1 (page 26):** The chart relating to Google in this figure provides
8 confidential and highly sensitive details, derived from Google's employee
9 compensation data, about the percentage of employees who received a base salary
10 increase during a year.
- 11 m) **Paragraph 60 (page 28):** This excerpt purports to summarize confidential and
12 highly sensitive aspects of the compensation practices and salary settings of
13 Defendants, including Google.
- 14 n) **Figure 2 (page 30):** The columns relating to Google in this figure provide
15 confidential and highly sensitive details, derived from Google's employee
16 compensation data, about variation in total compensation for Google employees.
- 17 o) **Figure 3 (page 31):** The columns relating to Google in this figure provide
18 confidential and highly sensitive details, derived from Google's employee
19 compensation data, about the total compensation for Google employees.
- 20 p) **Figure 7 (page 43):** The chart related to Google in this figure provides
21 confidential and highly sensitive details, derived from Google's employee
22 compensation data, about the frequency of calendar months for equity
23 distributions.
- 24 q) **Figure 8 (page 44):** The column related to Google in this figure contains a
25 confidential and highly sensitive analysis and discussion of Google's employee
26 compensation data.
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- 1 r) **Figure 9 (page 44):** The column related to Google in this figure contains a
2 confidential and highly sensitive analysis and discussion of Google's employee
3 compensation data.
- 4 s) **Figure 10 (page 45):** The column related to Google in this figure contains a
5 confidential and highly sensitive analysis and discussion of Google's employee
6 compensation data.
- 7 t) **Figure 11 (page 45):** The column related to Google in this figure contains a
8 confidential and highly sensitive analysis and discussion of Google's employee
9 compensation data.
- 10 u) **Paragraph 108 (page 49):** This excerpt purports to summarize confidential and
11 highly sensitive aspects of compensation data of Defendants, including Google.
- 12 v) **Figure 12 (page 50):** The rows related to Google in this figure contain a
13 confidential and highly sensitive analysis and discussion of Google's employee
14 compensation data.
- 15 w) **Figure 13 (page 51):** The column related to Google in this figure contains a
16 confidential and highly sensitive analysis and discussion of Google's employee
17 compensation data.
- 18 x) **Figure 14 (page 52):** The rows related to Google in this figure contain a
19 confidential and highly sensitive analysis and discussion of Google's employee
20 compensation data.
- 21 y) **Figure 15 (page 53):** This column in this figure related to Google contains a
22 confidential and highly sensitive analysis and discussion of Google's employee
23 compensation data.
- 24 z) **Figure 16 (page 55):** The rows related to Google in this figure contain a
25 confidential and highly sensitive analysis and discussion of Google's employee
26 compensation data.
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aa) **Figure 17 (page 56):** The rows related to Google in this figure contain a confidential and highly sensitive analysis and discussion of Google's employee compensation data.

bb) **Figure 18 (page 57):** The rows related to Google in this figure contain a confidential and highly sensitive analysis and discussion of Google's employee compensation data.

cc) **Figure 19 (page 58):** The rows related to Google in this figure contain a confidential and highly sensitive analysis and discussion of Google's employee compensation data.

Google's Confidential Information in Plaintiffs' Exhibits

4. I have also read and reviewed certain exhibits attached to the Declaration of Dean M. Harvey in Support of Plaintiffs' Consolidated Reply in Support of Motion for Class Certification and Opposition to Defendants' Motion to Strike the Report of Dr. Edward E. Leamer (Docket No. 248) ("Harvey Declaration") that specifically discuss or reference, and in some instances mischaracterize, information related to Google. Based on my familiarity with Google's internal decision making and business strategy regarding compensation and Google's competitive position in the labor market, the following exhibits to the Harvey Declaration contain confidential commercial information, the disclosure of which would likely cause competitive harm to Google by giving third parties (including Google's competitors in the labor market) direct insight into highly confidential and competitively sensitive aspects of Google's internal decision-making processes related to its business operations:

a) **Exhibit 4:** This exhibit contains transcript excerpts from the deposition of Arnon Geshuri, dated August 17, 2012, and reflects confidential and highly sensitive details about Google's recruiting strategies and resources with respect to particular types of candidates.

b) **Exhibit 10 (transcript pages 327 and 328 only):** This exhibit contains transcript excerpts from the deposition of Plaintiff Brandon Marshall, dated October 22,

1 2012, who I understand was employed with Google as a contractor during a
2 certain period of time. A portion of the selected excerpts (327:17- 328:25)
3 reflects confidential and highly sensitive information about Google's
4 compensation practices.

5 c) **Exhibit 13:** This exhibit contains transcript excerpts from the deposition of
6 Kevin M. Murphy, Ph.D., dated December 3, 2012. A portion of the selected
7 excerpts (260:11-25, 284:14-20, and 294:15-25) reflects confidential and highly
8 sensitive information about Google's compensation practices.

9 d) **Exhibit 22:** This exhibit is a chain of email messages, dated from June 25 to June
10 26, 2008, involving senior management at Google, including an email I sent to the
11 Senior Vice President of People Operations, that reflects confidential and highly
12 sensitive details of Google's internal deliberations and business strategy related to
13 making counteroffers to Google employees who have received offers from other
14 firms.

15 e) **Exhibit 23:** This exhibit is a chain of email messages, dated from August 19 to
16 August 20, 2012, involving senior Google management and an advisor to senior
17 management that reflects confidential and highly sensitive details of Google's
18 internal deliberations and business strategy related to making counteroffers to
19 Google employees who have received offers from other firms and the retention of
20 employees in the face of competition from startup companies.

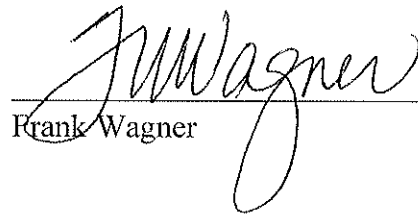
21 f) **Exhibit 24:** This exhibit is a chain of email messages, dated from September 6 to
22 September 14, 2010, involving senior Google management and an advisor to
23 senior management that reflects confidential and highly sensitive details of
24 Google's internal deliberations and business strategy related to its product
25 strategy and overall organizational structure.

26 g) **Exhibit 25:** This exhibit is a confidential report dated April 1, 2010 that was
27 submitted to the Department of Justice and which provides a detailed economic
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1 analysis of Google's Do Not Cold Call policy and includes confidential and
2 highly sensitive details of Google's hiring and recruiting strategies and processes,
3 as well as confidential and highly sensitive details of Google's collaborations with
4 other firms.

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7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct. Executed on December 14, 2012 in Mountain View, California.

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11 Frank Wagner
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